

# University Privacy Campaign

## Introduction to the

# Personal Data (Privacy) Ordinance



# Legislative Background

- **Personal Data (Privacy) Ordinance**
- **Came into effect on 20 December 1996**
- **Internationally accepted data protection principles**
- **Legal privacy right in the handling of personal data**
- **Legal cross-border transmission of personal data to facilitate the development of e-commerce**
- **Around 40 jurisdictions have data protection laws (mostly in Europe)**



# Objectives of the Ordinance

- Protecting the privacy right of a “**data subject**” in respect of “**personal data**”, but general privacy issues are not protected.

## “Data Subject”

A data subject refers to the living individual who is the subject of the “personal data” concerned.



# Definitions under the Ordinance

**“Personal Data”** should satisfy three conditions:

- (1) relating directly or indirectly to a living individual;
- (2) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
- (3) in a form in which “access to” or “processing of” the data is practicable.



# Definitions under the Ordinance

## “Data”:

any representation of information in any document, including expression of opinion or personal identifier (e.g. ID Card Number).

## “Document”:

In addition to written document, “document” includes visual or non-visual device, e.g. photo, audio tape, video tape, optical disc.



# Examples of Personal Data - Students

## Factual Information :

- Name, age, address, past and current academic record, etc.

## Expression of Opinions :

- Interview record, teachers' comments, academic assessment, etc.



# Examples of Personal Data – Staff Members

## Factual Information :

- resume, tax return, medical record.

## Expression of Opinions :

- Interview record, performance appraisal report, assessment of promotion or continuance in employment.



# The Ordinance Governs All Data Users

## “Data User”

- Any person (including private and public sector organizations and government departments) that controls the collection, holding, processing or use of “personal data”.





# Six Data Protection Principles (DPPs)

- **DPP 1** — Purpose and manner of collection
- **DPP 2** — Accuracy and duration of retention
- **DPP 3** — Use of personal data
- **DPP 4** — Security of personal data
- **DPP 5** — Information to be generally available
- **DPP 6** — Access to personal data

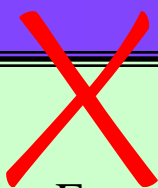


# Principle 1 – Purpose and manner of collection

- shall be collected for purposes related to the functions or activities of the data user.
- the data collected should be adequate but not excessive.
- the means of collection must be lawful and fair.



# Example of unfair collection – blind advertisement

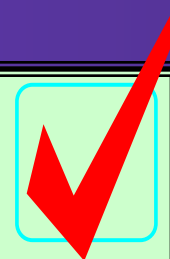


## Company Assistant

- Form 5 or above
- Knowledge of company secretarial duties

**Please send resume to PO Box 100**

- Submission of personal data by job applicants
- No identity of the employer provided
- No notification of purpose of use of the data
- Job applicants are denied of data access rights



## Company Assistant

- Form 5 or above
- Knowledge of company secretarial duties

**Interested parties please contact  
Miss Chan on 2808-xxxx**

- No submission of personal data by job applicants
- Contact person provided from whom applicants:
  - may seek to identify the employer
  - may seek information about purpose statement



# Principle 1 – Purpose and manner of collection

inform the data subject of the following immediately or in advance:

- a) the purposes of data collection;
- b) the classes of persons to whom the data may be transferred;
- c) whether it is obligatory or voluntary for the data subject to supply the data;
- d) where it is obligatory for the data subject to supply the data, the consequences for him if he fails to supply the data; and
- e) his rights to request access to and to request the correction of the data (*corresponding to DPP6*).



# Example of PICS

## *The Alpha Corporation*

### *Personal Information Collection Statement pertaining to Recruitment*

The personal data collected in this application form will be used by the Alpha Corporation **to assess your suitability to assume the job duties of the position for which you have applied and to determine preliminary remuneration, bonus payment, and benefits package to be discussed with you subject to selection for the position.**

Purpose Statement

Personal data marked with (\*) on the application form are regarded as mandatory for selection purposes. **Failure to provide these data may influence the processing and outcome of your application.**

Obligatory or optional to provide data

It is our policy to retain the personal data of unsuccessful applicants for future recruitment purposes for a period of two years. **When there are vacancies in our subsidiary or associate companies during that period, we may transfer your application to them for consideration of employment.**

Classes of transferees

Under the Personal Data (Privacy) Ordinance, you have a right to request access to, and to request correction of, your personal data in relation to your application. **If you wish to exercise these rights, please complete our "Personal Data Access Form" and forward it to our Data Protection Officer in the Human Resources.**

Access & correction right

## **Principle 2 – Accuracy and duration of retention**

- Data users shall take practicable steps to ensure the accuracy of personal data held by them.**
- If data users believe the data are inaccurate, they should not use the data before rectifying them or they should erase the data.**
- The data should be deleted after the fulfillment of the purpose for which the data are used.**



## Principle 3 – Use of personal data

**Personal data shall only be used for the purposes for which they were collected or directly related purposes, unless the data subject has voluntarily given explicit consent to a change in purposes.**



## Principle 4 – Security of personal data

- All practicable steps shall be taken to ensure that personal data are protected against unauthorized or accidental
  - (a) access,
  - (b) processing,
  - (c) erasure or
  - (d) other use.
- Security in the storage, processing and transmission of data.





# **Principle 5 – Information to be generally available**

**Data users have to provide**

- (a) policies and practices in relation to personal data;**
- (b) the kind of personal data held;**
- (c) the main purposes for which personal data are used.**



## **Principle 6 – Access to personal data**

- **A data subject shall be entitled to**
  - (a) request access to his/her personal data;**
  - (b) request correction of his/her personal data.**
- **Data user may charge a fee for complying with the data access request.**



# PERSONAL DATA (PRIVACY) ORDINANCE DATA ACCESS REQUEST FORM

## Important Notice to Requestor

1. Please read this Form and the footnotes carefully before completing this Form. Where this Form contains a summary of the relevant requirements of the Personal Data (Privacy) Ordinance ("the Ordinance"), the summary is provided for reference purpose only. For a complete and definitive statement of the law, please refer to the Ordinance itself.
2. This Form is specified by the Privacy Commissioner for Personal Data ("the Commissioner") under section 67(1) of the Ordinance with effect from 1 September 2010. The data user may refuse to comply with your data access request ("your request") if it is not made in this Form (see section 20(3)(e) of the Ordinance).
3. Please complete this Form in Chinese or English. The data user may refuse to comply with your request if your request is not made in either language (see section 20(3)(a) of the Ordinance).
4. To make a data access request, you must either be the data subject or a "relevant person" as defined in section 2 of the Ordinance (please refer to Part III of this Form).
5. You are not entitled to access data which are not personal data or personal data not belonging to you (see section 18(1) of the Ordinance). The data user is only required to provide you with a copy of your personal data rather than a copy of the document containing your personal data. In most situations the data user may elect to provide a copy of the document concerned. If the personal data you request is recorded in an audio form, the data user may provide a transcript of that part of the audio record which contains your personal data.
6. It is important that you specify in the Form clearly and in detail the personal data that you request. The data user may refuse to comply with your request if you have not supplied him with such information as he may reasonably require to locate the requested data (see section 20(3)(b) of the Ordinance).
7. Do not send this Form to the Commissioner. The completed Form should be sent directly to the data user to whom you made your request.
8. The data user may require you to provide identity proof such as your Hong Kong Identity Card and may charge a fee for complying with your request (see sections 20(1)(a) and 28(2) of the Ordinance).
9. The data user may refuse to comply with your request in the circumstances specified in section 20 of the Ordinance.

## Important Notice to Data User

1. You are required by section 19(1) of the Ordinance to comply with a data access request within 40 days after receiving the same. To comply with a data access request means to supply a copy of the requested data. A mere notification given to the requestor to collect the requested data or a note sent to the requestor for payment of a fee is insufficient. In complying with the request, you should omit or otherwise not disclose the names or other identifying particulars of individuals other than the data subject.
2. If you are unable to comply with the data access request within 40 days or have a lawful reason for refusing to comply with the request pursuant to section 20 of the Ordinance, you must give the requestor written notification of your refusal and your supporting reasons within the same 40 days period (see sections 19(2) and 21(1) of the Ordinance). If you do not hold the requested data, you should inform the requestor accordingly within the same 40 days period.
3. It is an offence not to comply with a data access request in accordance with the requirements of the Ordinance. Any data user convicted of such an offence is liable to a fine at level 3 (currently set at HK\$10,000) (see section 64(10) of the Ordinance).
4. You may charge a fee for complying with a data access request, but section 28(3) of the Ordinance provides that "no fee imposed for complying with a data access request shall be excessive".
5. You shall refuse to comply with a data access request –
  - (a) if you are not supplied with such information as you may reasonably require –
    - (i) in order to satisfy you as to the identity of the requestor;
    - (ii) where the requestor purports to be a relevant person, in order to satisfy the data user –
      - (A) as to the identity of the individual in relation to whom the requestor purports to be such a person; and
      - (B) that the requestor is such a person in relation to that individual;
  - (b) subject to subsection (2) of the Ordinance, if you cannot comply with the request without disclosing personal data of which any other individual is the data subject unless you are satisfied that the other individual has consented to the disclosure of the data to the requestor; or
  - (c) in any other case, if compliance with the request is for the time being prohibited under the Ordinance.  
(see section 20(1) of the Ordinance)

# Offences

**Section 64 provides for a variety of offences, for example non-compliance with an enforcement notice served by the Privacy Commissioner carries a penalty of a fine at Level 5 (at present \$50,000) and imprisonment for 2 years.**



# Compensation

**Section 66 provides for an individual who suffers damage, including injured feelings, as a result of a contravention of the Ordinance, to obtain compensation from the data user concerned.**



# Code of Practice



# Code of Practice

- **Identity Card Number and other Personal Identifiers**
- **Human Resource Management**
- **Consumer Credit Data**



# Guidelines





# Guidelines

- **Monitoring and Personal Data Privacy at Work**
- **Guidance of Collection of Fingerprint Data**
- **Guidance on CCTV Surveillance Practices**
- **Guidance on Data Breach Handling and the Giving of Breach Notification**



# Contact Us



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